

SECOND AMENDED COMPLAINT

Plaintiff Daniel M. Miller (“Plaintiff”), for its complaint against Defendants Facebook, Inc. (“Facebook”) and Yao Wei Yeo (“Yeo”, collectively with Facebook as “Defendants”), hereby demands a jury trial and alleges as follows:

THE PARTIES

1. Plaintiff, Daniel M. Miller, is an individual residing at 2079 Kinsmon Drive, Marietta, Georgia 30062.

2. On information and belief, Defendant Facebook, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business at 1601 S. California Avenue, Palo Alto, California 94304.

3. Upon information and belief, Defendant Yeo is an individual with unknown address that was not ascertainable after reasonable diligence.

JURISDICTION AND VENUE

4. This action arises under the Laws of the United States, 17 U.S.C. § 1 et seq., including 17 U.S. § 501.

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332(a)(1), 1367 and 1338(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) and 28 U.S.C. § 1391(b) and (c).

7. On information and belief, Defendant Facebook is subject to personal jurisdiction in this district by virtue of, among other things, doing business and committing acts of infringement in this State, including in this judicial district, through agents and

1 representatives and/or otherwise having substantial contacts with this State and this
2 judicial district.

3 8. On information and belief Defendant Yeo is subject to personal jurisdiction
4 in this district by virtue of, among other things, committing acts of infringement in this
5 State, including in this judicial district, as well as trying to specifically hide evidence of his
6 infringement from specific residents of Georgia.
7

8 **FACTUAL BACKGROUND**
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10 9. In early 2007, Plaintiff authored the video game *Boomshine*.

11 10. *Boomshine* is a game played on the Internet using Adobe Flash TM
12 technology where players click on a floating circle that causes the clicked circle to expand
13 and causes other contacted floating circles to likewise expand in a chain reaction.
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15 11. *Boomshine* was published by Plaintiff on the Internet on the website
16 K2xl.com starting on March 9, 2007.
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18 12. Plaintiff was duly and lawfully granted a copyright registration on
19 Boomshine by the United States Copyright Office with registration number
20 TX0007089855.
21

22 13. Defendant Yeo does business as Zwigglers Apps on the websites
23 www.facebook.com/zwigglers and www.zwigglers.com.
24

25 14. At least as early as April, 2009, Defendant Yeo published the game
26 *ChainRxn* on a website hosted by Defendant Facebook.
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1 15. *ChainRxn* is a game played on the Internet using Adobe Flash™ technology
2 where players click on a floating circle that causes the clicked circle to expand and causes
3 other contacted floating circles to likewise expand in a chain reaction.

4 16. The *ChainRxn* game was created and published utilizing the Facebook
5 Developer Platform.
6

7 17. When the *ChainRxn* game was initially published on Facebook until
8 sometime after the initial filing of this action on October 9, 2009, users would access the
9 game by navigating from a link at www.facebook.com/zwigglers. This link would take
10 the user to a Facebook webpage called the *ChainRxn* canvas page.
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12 18. The *ChainRxn* canvas page was a webpage sent from Facebook that provided
13 information related to *ChainRxn*, advertisements from Facebook, and an embedded iFrame
14 in the users' browser. The Facebook canvas iFrame caused the users' browser to retrieve
15 information from a website designated by Defendant Yeo while making it appear to the
16 user that the user was receiving information hosted on, or provided by, the Facebook
17 website.
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20 19. Defendant Yeo designed the *ChainRxn* application to interface with the
21 Facebook social network. When a user would access the *ChainRxn* canvas page, the
22 *ChainRxn* application along with the information contained on the *ChainRxn* canvas page,
23 such as the embedded Facebook iFrame, advertisements from Facebook, and information
24 related to *ChainRxn*, would be downloaded to the users' computer's cache. In this manner,
25 the *ChainRxn* application, while not "hosted" on Facebook's servers, routinely drew
26 information from Facebook's servers and was distributed to each user who accessed the
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1 *ChainRxn* canvas page by way of the Facebook network. When a user played *ChainRxn*,
2 this fact, along with information such as high scores and invitations to play *ChainRxn*,
3 would be disseminated to the user's "Friend" network by way of Facebook's servers. This
4 interfacing between the *ChainRxn* application and Facebook's servers was essential in
5 generating interest in *ChainRxn* and distributing *ChainRxn* to Facebook's large user base.
6 Facebook thereby facilitated access to the *ChainRxn* application significantly magnifying
7 the effects of Defendant Yeo's direct infringement of the Plaintiff's copyright in
8 *Boomshine*.
9

10
11 20. Defendant Yeo unlawfully copied *Boomshine* by (1) improperly accessing
12 and decompiling the *Boomshine* source code with a decompiling program, or by viewing
13 the *Boomshine* application via the K2xl.com web site, and (2) then reproducing the
14 *Boomshine* source code from the original decompiled source code, or by authoring, from
15 the "look and feel" of the *Boomshine* application available on the K2xl.com web site, a
16 source code designed and intended to result in the *ChainRxn* application that is
17 substantially similar to *Boomshine* in its structure, sequence, organization, and/or user
18 interface.
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22 21. Upon information and belief, Defendant Yeo agreed to the Facebook
23 Statement of Rights and Responsibilities that provides Facebook the right to remove access
24 to content through Facebook if that content infringes other people's intellectual property
25 rights.
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27 22. Upon information and belief, Defendant Yeo agreed to the Facebook
28 Statement of Rights and Responsibilities that provides Facebook the right to disable

1 Defendant Yeo's account for continued infringement of third-party intellectual property
2 rights.

3 23. Defendant Facebook published *ChainRxn* in their Application Directory
4 which allows every Facebook user to search and view the application from within the
5 directory.
6

7 24. Defendant Facebook took the affirmative step to approve *ChainRxn* for
8 publication on its Application Directory.
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10 25. *ChainRxn* copies the look and feel of *Boomshine* by incorporating almost
11 every visual element of the game.

12 26. After Defendant Yeo published *ChainRxn* on Defendant Facebook's website,
13 members of the public were deceived regarding the origin of *ChainRxn*.
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15 27. Because of the ability to access *ChainRxn* through Facebook and the
16 inclusion of *ChainRxn* on the Facebook application directory, Defendant Yeo was assisted
17 in his ability to distribute infringing copies of the *ChainRxn* game to Facebook users across
18 the United States and the world.
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20 28. Defendant Facebook provides advertisements on the webpage that hosts the
21 *ChainRxn* game.
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23 29. On May 7, 2009, Plaintiff sent a letter to Defendant Facebook (attached
24 hereto as Exhibit A) demanding that Facebook remove *ChainRxn* from its website because
25 it violates Plaintiff's copyrighted *Boomshine*.
26

27 30. The letter to Defendant Facebook provided Facebook specific knowledge
28 about the infringement of Plaintiff's copyright by the *ChainRxn* game.

1 national and worldwide distribution channel of the *ChainRxn* game despite simple
2 measures that could be taken to prevent the distribution of *ChainRxn* through Facebook.

3 46. Defendant Facebook, Inc. was aware of the infringing activity or was
4 willfully blind to the infringing activity.
5

6 47. Defendant Facebook, Inc. allowed and encouraged Yeo to reproduce,
7 distribute and publicly display Plaintiff's work by and through the Facebook.com.
8

9 48. Defendant Facebook, Inc. materially contributed to the infringement by
10 providing the location and tools used for the infringing activity as described herein.

11 49. The acts and conduct of Facebook, Inc., as alleged above in this Second
12 Amended Complaint constitute contributory copyright infringement.
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14 50. As a result of its wrongful conduct, Defendant Facebook, Inc. is
15 contributorily liable to Plaintiff for copyright infringement pursuant to 17 U.S.C. § 501 and
16 interpreting case law. Plaintiff has suffered, and will continue to suffer, substantial losses,
17 including, but not limited to, damage to his business reputation and goodwill.
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19 51. Plaintiff is entitled to recover damages, which include his losses and any and
20 all profits Defendant Facebook, Inc. has made as a result of its wrongful conduct.
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PRAYER

WHEREFORE, Plaintiff prays for a judgment against Defendants on all counts as follows:

A. That this Court enter permanent injunctive relief enjoining and restraining Defendant Facebook, Inc. its officers, directors, employees, agents, licensees, servants, successors, and assigns, and any and all persons in active concert or participation with any of them, from the manufacture, publication, display, distribution, advertising of, sale, or offer for sale of *ChainRxn* and any other work which infringes Plaintiff's copyrights in *Boomshine*;

B. That this Court enter permanent injunctive relief enjoining and restraining Defendant Yeo, his agents, licensees, servants, successors, and assigns, and any and all persons in active concert or participation with any of them, from the manufacture, publication, display, distribution, advertising of, sale, or offer for sale of *ChainRxn* and any other work which infringes Plaintiff's copyrights in *Boomshine*;

C. That this Court enter an order adjudging that Defendants have willfully infringed upon Plaintiff's copyrights in and to *Boomshine*;

D. That this Court require Defendants to disgorge and to account to Plaintiff for any and all profits derived by Defendants from the manufacture, production, publication, distribution, advertisement, sale, transfer or other exploitation of the game *ChainRxn* and any other work which infringes Plaintiff's copyrights in *Boomshine*;

E. That this Court award Plaintiff damages against Defendants in an amount to be determined at Trial;

1 F. That this Court grants such other and further relief as it shall deem
2 just and proper, including interest and the costs and disbursements of this action.

3 PLAINTIFF DEMANDS A TRIAL BY JURY.
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5
6 s/ Brian D. Hancock
7 BRIAN D. HANCOCK (*pro hac vice*)
8 HENINGER GARRISON DAVIS, LLC
9 2224 1st Avenue North
10 Birmingham, Alabama, 35203
11 Telephone: (205) 326-3336
12 Facsimile: (205) 326-3332

13 DOUGLAS L. BRIDGES (*pro hac vice*)
14 HENINGER GARRISON DAVIS, LLC
15 1 Glenlake Parkway, Suite 700
16 Atlanta, Georgia 30328
17 Telephone: 678-638-6309
18 Facsimile: 678-638-6142
19 Email: dbridges@hgdllawfirm.com

20 D. GILL SPERLEIN
21 THE LAW OFFICE OF D. GILL SPERLEIN
22 584 Castro Street, Suite 879
23 San Francisco, CA 94114
24 Telephone: (415) 404-6615
25 Facsimile: (415) 404-6616
26 E-mail: gill@sperleinlaw.com

27 ATTORNEYS FOR PLAINTIFF
28